



DEPARTMENT OF PLANNING, INDUSTRY & ENVIRONMENT

Guidance for local government on preparing conditions of consent from the Biodiversity Development Assessment Report

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Purpose of this document

This guidance is for consent authorities who determine development applications under Part 4 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) (not including state significant development) to which the Biodiversity Offsets Scheme (BOS) applies.

The BOS will apply if the proposed development is likely to ‘significantly affect threatened species’.

Section 7.2 of the *Biodiversity Conservation Act 2016* (BC Act) states that a development will ‘significantly affect threatened species’ if:

- a. it is likely to significantly affect threatened species or ecological communities, or their habitats, according to the test in section 7.3, or
- b. the development exceeds the biodiversity offsets scheme threshold if the biodiversity offsets scheme applies to the impacts of the development on biodiversity values, or
- c. it is carried out in a declared area of outstanding biodiversity value.

Further information on the BOS and triggers for entry is available at www.environment.nsw.gov.au/biodiversity/offsetsscheme.htm.

The BC Act requires a Biodiversity Development Assessment Report (BDAR), prepared by an accredited assessor, to be submitted with a development application when the BOS applies. When granting consent to a proposed development to which the BOS applies, the conditions of consent must require the applicant to retire biodiversity credits of the number and class specified in the relevant BDAR in order to offset the residual impact of the development on biodiversity values (s. 7.13(3) of the BC Act).

This guidance supports consent authorities to prepare conditions of consent for development applications to which the BOS applies.

The guidance provides advice on:

- incorporating the content of the BDAR in the conditions of consent, and
- confirming offset conditions have been complied with.

The requirement to impose a credit obligation does not limit the consent authority’s ability to require other biodiversity related conditions it deems to be necessary (s. 7.13(6)(a) of the BC Act).

Development applications that are not subject to the BOS will still be assessed under section 4.15 of the EP&A Act. In considering the development application, conditions of consent relating to biodiversity impacts may still be applied if deemed appropriate; however, conditions of consent for developments not subject to the BOS cannot require an offset in the form of biodiversity credits. Conditions for development not subject to the BOS are outside of the scope of this guidance.

General principles

When the Biodiversity Offsets Scheme applies, the development application must be accompanied by a Biodiversity Development Assessment Report

The required content of a BDAR is outlined in the BC Act, Biodiversity Assessment Method (BAM) and the [Biodiversity Conservation Regulation 2017](#) (BC Regulation). The BDAR prepared by an accredited assessor on behalf of the proponent will:

- identify the proposed footprint of the development including all temporary access, storage facilities or other infrastructure
- describe measures proposed to be taken to avoid and minimise impacts and justify the proposal
- assess the likely direct and indirect impacts of the proposal on biodiversity values, including prescribed biodiversity impacts as defined in clause 6.1 of the BC Regulation
- describe proposed measures to mitigate and manage impacts on biodiversity, including accountability and timing
- outline the number and class of credits required to be retired in accordance with like for like offset rules (cl. 6.8(a) BC Regulation), which would offset the impact if the development were carried out
- outline the number and class of credits proposed to be retired in accordance with the variation rules (cl. 6.8(b) BC Regulation) in any case in which the proponent of the development proposes to use the variation rules, and the proposed variation supported by documentation of reasonable steps taken to identify like for like offsets in accordance with the ancillary rules published under cl. 6.5 of the BC Regulation
- outline the details of any proposal to fund a biodiversity conservation action in accordance with the offset rules (cl. 6.8(c) BC Regulation).

For more information on when the BOS applies, visit [Biodiversity Offsets Scheme entry requirements](#).

For more information on the BAM and BDARs, visit [The Biodiversity Assessment Method](#).

New subdivisions that are likely to have a significant impact on threatened species are subject to the BOS

When applying the area clearing threshold in clause 7.2 of the BC Regulation, subdivision development applications are required to consider the clearing of native vegetation that, in the opinion of the consent authority, is required or likely to be required for the purposes for which the land is to be subdivided (cl. 7.1(3) BC Regulation). Guidance on determining the development footprint for this purpose is provided in the [Biodiversity Offset Scheme Entry Threshold tool user guide](#).

Offset requirements will apply to subdivision development applications in the same way they apply to other development types. Staged retirement of credits may be considered if multiple future land releases are proposed. The model conditions provide guidance on conditioning staged credit retirement.

Concurrence from the Environment Agency Head is required if the consent authority (if non state significant development) reduces the number of biodiversity credits required to be retired

The BC Act allows for the consent authority to increase or decrease the number of biodiversity credits, set out in the BDAR submitted with the application, that are required to be retired (s. 7.13(4)). The consent authority must determine that the increase or decrease is justified having regard to environmental, social and economic impacts of the proposed development (s. 7.13(4)). The consent authority must give reasons for a decision to increase or decrease credit requirements (s. 7.13(4)). Department of Planning, Industry and Environment (DPIE) recommends that reasons are published on the consent authority's website as a minimum.

When the consent authority is not a Minister, the consent authority must seek concurrence from the Environmental Agency Head in the case where a credit requirement is decreased. Clause 59 of the Environmental Planning and Assessment Regulation 2000 outlines timeframes associated with the concurrence process.

For more information on seeking concurrence, visit [Local government information and resources](#).

Offset obligations are to be satisfied prior to impacting on biodiversity

The BC Act requires that a condition to retire credits is to be complied with before any development that would impact on biodiversity values is carried out (s7.13(5)). Model conditions of consent have been designed to require satisfaction of offset obligations before the issue of a subdivision or construction certificate.

Evidence of satisfaction of offset obligations is required

Model conditions of consent have been designed to require that evidence of the satisfaction of offset obligations is provided to council. The conditions have been worded to ensure that evidence is required to be provided to the consent authority for the development. If the condition identifies that evidence is to be provided to the consent authority, a private certifier cannot assume the role of the consent authority in confirming compliance with offset conditions. Prior to issuing a subdivision or construction certificate, a private certifier must be satisfied that evidence of retirement has been provided to the consent authority.

Note that the BOS, and the requirement to retire credits, does not apply to complying development.

Biodiversity actions available to offset a credit requirement are listed in the ancillary rules

Biodiversity actions will only be available for a limited number of species. Actions and the species they relate to are identified in the ancillary rules. To be used as an offset, biodiversity actions must relate to a species impacted by the proposed development.

Biodiversity actions outside of this list are not an offset. The list will be updated over time as actions are completed. The proponent, or their accredited assessor, must confirm the

availability of an action with DPIE prior to proposing the action in a BDAR as an offset to an impact.

Use of variation rules can only be approved following demonstration of reasonable steps

A proponent may apply to use the variation rules to satisfy their credit obligation. Approval to use variation rules is given via conditions of consent.

However, the proponent must first have taken reasonable steps to locate like for like offsets. Actions that constitute 'reasonable steps' are outlined in the ancillary rules. If use of the variation rules is proposed, the proponent must document their effort regarding the taking of reasonable steps to find like for like offsets and provide the information with their development application. This may occur through the BDAR as part of the application process, or potentially as a section 96 (EP&A Act) modification to an approval.

For more information on the offset rules including reasonable steps, visit [The offset rules](#).

The requirement to condition a credit obligation does not limit the consent authority's ability to require other measures to be undertaken to avoid or minimise impacts on biodiversity

The BAM requires that the BDAR identify measures to avoid, mitigate or manage impacts in accordance with the guidelines provided. These measures may relate to:

- site based measures to prevent offsite impacts on native vegetation and habitat during construction and operation
- managing prescribed biodiversity impacts which cannot be offset
- adaptive management approaches to impacts which are difficult to predict and assess with certainty.

Including measures to avoid, minimise, mitigate or manage impacts in conditions of consent will provide certainty that the measures will be implemented.

The consent authority's power to condition requirements to avoid or minimise biodiversity impacts is not limited to the measures outlined in the BDAR.

Conditions of consent – Like for like credit retirement

The BDAR will indicate the number and class of 'like for like' credits that would be required to be retired if the development were to proceed. In most cases, conditions of consent will reflect the 'like for like' credit obligation. The only circumstance in which credit obligations would not be expressed in 'like for like' terms would be when the use of the variation rules has been approved.

Note that this obligation may be achieved through either:

- the purchase and retirement of credits

- payment to the Biodiversity Conservation Fund (BCF) administered by the Biodiversity Conservation Trust (BCT).

Pre-requisites for use of this offset mechanism

- The BAM Credit Calculator (BAM-C) will deliver a biodiversity credit report detailing:
 - the offset obligation in terms of class and number of ecosystem credits and species credits impacted
 - ecosystem credits that are considered to be 'like for like' which may be used to satisfy the offset obligation
 - IBRA subregions that are considered to be 'like for like' from which ecosystem credits may be sourced to satisfy the offset obligation
 - a payment to the BCF equivalent to the offset obligation.
- The BDAR, prepared by an accredited assessor on behalf of the proponent, must identify the class and number of credits required to be retired in accordance with like for like rules in the BDAR. The BDAR will include the credit report produced by the BAM-C.

Confirming compliance

- Retirement of credits: the proponent provides evidence to the consent authority in the form of a credit retirement report issued by DPIE confirming credit transactions. The consent authority confirms the credit transaction corresponds to a like for like credit of the appropriate number from an appropriate location.
- Payment to the BCF: the proponent provides evidence to the consent authority in the form of a section 6.33 Statement Confirming Payment into the BCF issued by the BCT. The statement will indicate the number and class of credits that the payment corresponds to and any related development application reference. The consent authority confirms the payment transaction corresponds to the appropriate class and number of credits.

Funding a biodiversity action

Pre-requisites for use of this offset mechanism

- The BDAR, prepared by an accredited assessor on behalf of the proponent, must identify the credit class and number proposed to be offset by funding a biodiversity action (as an alternative to the retirement of credits).
- The action must relate to an entity impacted by the proposal.
- The BDAR must indicate a funding amount to be directed to the biodiversity conservation action. The BAM Fund Payment Report will indicate the value of each credit class to be retired at the time that the assessment is finalised. These values must be used to calculate the amount of funding to be directed to a biodiversity action.
- The proponent must provide evidence of the BAM Fund Payment Report with the BDAR.
- The proponent must have contacted DPIE to confirm the action is available and the proposed funding amount is acceptable.
- The proponent must provide evidence of contact with DPIE in the form of formal written correspondence from DPIE confirming it will accept and manage the specified amount of funds for the specified purpose.

Confirming compliance

- The proponent must provide evidence of payment to DPIE for an amount matching the agreed amount. DPIE will provide a receipt for this payment once received.

Variation rule credit retirement

Pre-requisites for use of this offset mechanism

- Reasonable steps to find like for like credits must be documented in the BDAR.
- The proponent must identify the credit class and number proposed to be offset in accordance with the variation rules in the BDAR.
- The BAM-C will deliver a biodiversity credit report (variations) detailing:
 - the offset obligation in terms of class and number of ecosystem credits and species credits impacted
 - ecosystem credits which may be used under variation rules to satisfy the offset obligation
 - IBRA subregions from which ecosystem credits may be sourced under variation rules to satisfy the offset obligation.

Confirming compliance

- The proponent provides evidence to the consent authority in the form of a credit retirement report from DPIE confirming credit transactions. The consent authority confirms the credit transaction corresponds to the approved variation credit class.

Staged credit retirement

Pre-requisites for use of this offset mechanism

- The proponent must identify the credit class and number proposed to be offset relative to each development stage in the BDAR.
- The credit obligation for each stage must correlate with the biodiversity impact of each stage, to ensure the appropriate credits are retired prior to the impact occurring.
- The proponent must identify indicative timing for the commencement of each stage in the BDAR.

Confirming compliance

- Retirement of credits: the proponent provides evidence to the consent authority in the form of extracts from the Credit Register confirming credit transactions. The consent authority confirms the credit transaction corresponds to a like for like credit of the appropriate number from an appropriate location.
- Payment to the BCF: the proponent provides evidence to the consent authority in the form of a section 6.33 Statement Confirming Payment into the BCF issued by the BCT. The statement will indicate the number and class of credits the payment corresponds to

and any related development application reference. The consent authority confirms the payment transaction corresponds to the appropriate class and number of credits.

Conditioning avoid and minimise measures

Information provided with a development application

- The BDAR must identify measures to which the proponent is committing to avoid, minimise, mitigate or manage the impacts of their proposal. This is best approached through the development of a Biodiversity Management Plan.
- The BDAR must identify the phase of the proposal to which each measure applies.
- The BDAR will indicate what the measure is, when and how often it is to be applied, and who is responsible for undertaking the measure.

Confirming compliance

- The consent authority is responsible for ensuring compliance with these conditions as per normal procedures.

Model conditions

Like for like credit retirement conditions

Ecosystem credit retirement conditions

- 2.1 Prior to issue of [select: operational commencement/construction certificate/subdivision certificate] the class and number of ecosystem credits in Table [X] must be retired to offset the residual biodiversity impacts of the development.
- 2.2 The requirement to retire credits in condition 2.1 may be satisfied by payment to the Biodiversity Conservation Fund of an amount equivalent to the class and number of ecosystem credits, as calculated by the BAM Credit Calculator (BAM-C)¹.
- 2.3 Evidence of the retirement of credits or payment to the Biodiversity Conservation Fund in satisfaction of condition 2.1 must be provided to the consent authority prior to [select: operational commencement/issue of construction certification/issue of subdivision certificate].

Table [X] Ecosystem credits required to be retired – like for like

Impacted plant community type	Number of ecosystem credits	IBRA subregion	Plant community type(s) that can be used to offset the impacts from development
[Insert name and PCT ID for impacted plant community type]	[Insert number of credits for the impacted plant community type]	[Insert IBRA subregions] From a location within 100 km of the impact site	[Insert plant community type(s) that can be used to offset the impacts from development]

Species credit retirement conditions

- 2.4 Prior to [select: operational commencement/issue of construction certificate/issue of subdivision certificate] the class and number of species credits in Table [X] must be retired to offset the residual biodiversity impacts of the development.

¹ Note that prices of credits in the BAM-C are subject to change. The amount payable to discharge an offset obligation will be determined at the time of payment.

- 2.5 The requirement to retire credits outlined in condition 2.4 may be satisfied by payment to the Biodiversity Conservation Fund of an amount equivalent to the class and number of species credits, as calculated by the BAM Credit Calculator (BAM-C)².
- 2.6 Evidence of the retirement of credits or payment to the Biodiversity Conservation Fund in satisfaction of Table [X] requirements must be provided to the consent authority prior to [select: operational commencement/issue of construction certification/issue of subdivision certificate].

Table [X] Species credits required to be retired – like for like

Impacted species credit species	Number of species credits	IBRA subregion
[Insert name of impacted species]	[Insert number of credits for the impacted species]	Anywhere in NSW

Funding a biodiversity action

Funding a biodiversity action condition

- 2.7 Prior to [select: operational commencement/issue of construction certificate/issue of subdivision certificate] funds must be transferred to DPIE for the purposes of undertaking the biodiversity actions identified in Table [X].
- 2.8 Evidence of the transfer of funds in satisfaction of Table [X] is to be provided to the [insert consent authority] prior to [select: operational commencement/issue of construction certification/issue of subdivision certificate].

Table [X] Species credit species – biodiversity actions

Impacted species credit species	Number of species credits	Biodiversity action to be funded	Funding amount
[Insert name of impacted species]	[Insert number of credits for the impacted species]	[Insert title of biodiversity action]	[Insert amount of funding]

² Note that prices of credits in the BAM-C are subject to change. The amount payable to discharge an offset obligation will be determined at the time of payment.

Variation rule credit retirement conditions

Ecosystem credit retirement conditions

- 2.9 Prior to [select: operational commencement/issue of construction certificate/issue of subdivision certificate] the class and number of species credits in Table [X] must be retired to offset the residual ecosystem impacts of development.
- 2.10 Evidence of the retirement of credits in satisfaction of condition 2.9 is to be provided to the consent authority prior to [select: operational commencement/issue of construction certification/issue of subdivision certificate].

Table [X] Ecosystem credits required to be retired – variation rules

Impacted plant community type	Number of ecosystem credits	IBRA subregion	Approved variation plant community type(s) that can be used to offset the impacts from development
[Insert name and PCT ID for impacted plant community type]	[Insert number of credits for the impacted plant community type]	[Insert IBRA subregions] From a location within 100 km of the impact site	[Insert plant community type(s) that can be used to offset the impacts from development]

Species credit retirement conditions

- 2.11 Prior to issue of [select: operational commencement/construction certificate/subdivision certificate] the class and number of species credits in Table [X] must be retired to offset the impacts of development.
- 2.12 Evidence of the retirement of credits in satisfaction of condition 2.11 is to be provided to the consent authority prior to [select: operational commencement/issue of construction certification/issue of subdivision certificate].

Table [X] Species credits required to be retired – variation rules

Impacted species credit species	Number of species credits	IBRA subregion	Approved variation species credit species that can be used to offset the impacts from development
[Insert name of impacted species]	[Insert number of credits for the impacted species]	Anywhere in NSW	[Insert species credit species that can be used to offset the impacts from development]

Staged credit requirement conditions

Ecosystem and species credit retirement conditions – Stage [A]

- 2.13 Prior to the commencement of works within the area identified as [insert stage identifier] on the [insert reference to plan], the class and number of ecosystem credits in Table [A1] must be retired to offset the residual impacts of development.
- 2.14 Prior to the commencement of works within the area identified as [insert stage identifier] on the [insert reference to plan], the class and number of species credits in Table [A2] must be retired to offset the impacts of development.
- 2.15 The requirement to retire credits in conditions 2.13 and 2.14 may be satisfied by payment to the Biodiversity Conservation Fund of an amount equivalent to the class and number of ecosystem credits or number of species credits, as calculated by the BAM Credit Calculator (BAM-C).
- 2.16 Evidence of the retirement of credits or payment to the Biodiversity Conservation Fund in satisfaction of Table [A1] and [A2] requirements must be provided to the consent authority prior to commencement of works³.

Table [A1] Ecosystem credits required to be retired – Stage [A]

Impacted plant community type	Number of ecosystem credits	IBRA subregion	Plant community type(s) that can be used to offset the impacts from development
[Insert name and PCT ID for impacted plant community type]	[Insert number of credits for the impacted plant community type]	[Insert IBRA subregions] From a location within 100 km of the impact site	[Insert plant community type(s) that can be used to offset the impacts from development]

Table [A2] Species credits required to be retired – Stage [A]

Impacted species credit species	Number of species credits	IBRA subregion
[Insert name of impacted species]	[Insert number of credits for the impacted species]	Anywhere in NSW

³ Note that prices of credits in the BAM-C are subject to change. The amount payable to discharge an offset obligation will be determined at the time of payment.

Ecosystem and species credit retirement conditions – Stage [B]

- 2.17 Prior to the commencement of works within the area identified as [insert stage identifier] on the [insert reference to plan], the class and number of ecosystem credits in Table [B1] must be retired to offset the impacts of development.
- 2.18 Prior to the commencement of works within the area identified as [insert stage identifier] on the [insert reference to map], the class and number of species credits in Table [B2] must be retired to offset the impacts of development.
- 2.19 The requirement to retire credits in conditions 2.17 and 2.18 may be satisfied by payment to the Biodiversity Conservation Fund of an amount equivalent to the class and number of ecosystem credits or number of species credits, as calculated by the BAM Credit Calculator (BAM-C)⁴.
- 2.20 Evidence of the retirement of credits or payment into the Biodiversity Conservation Fund in satisfaction of Table [B1] and [B2] requirements is to be provided to the consent authority prior to commencement of works.

Table [B1] Ecosystem credits required to be retired – Stage [B]

Impacted plant community type	Number of ecosystem credits	IBRA subregion	Plant community type(s) that can be used to offset the impacts from development
[Insert name and PCT ID for impacted plant community type]	[Insert number of credits for the impacted plant community type]	[Insert IBRA subregions] From a location within 100 km of the impact site	[Insert plant community type(s) that can be used to offset the impacts from development]

Table [B2] Species credits required to be retired – Stage [B]

Impacted species credit species	Number of species credits	IBRA subregion
[Insert name of impacted species]	[Insert number of credits for the impacted species]	Anywhere in NSW

⁴ Note that prices of credits in the BAM-C are subject to change. The amount payable to discharge an offset obligation will be determined at the time of payment.

Conditioning avoid and minimise measures

Biodiversity Management Plan

- 2.21 Prior to [select: operational commencement/issue of construction certificate/issue of subdivision certificate], a Biodiversity Management Plan must be prepared to the satisfaction of the consent authority. The Biodiversity Management Plan may form part of a Construction Environmental Management Plan.
- 2.22 The Biodiversity Management Plan must identify the development site as per the Biodiversity Development Assessment Report (BDAR) and approved plans.
- 2.23 The Biodiversity Management Plan must identify areas of land that are to be retained as outlined in the BDAR.
- 2.24 Construction impacts must be restricted to the development site and must not encroach into areas of retained native vegetation and habitat. All materials stockpiles, vehicle parking, machinery storage and other temporary facilities must be located within the areas for which biodiversity impacts were assessed in the BDAR.
- 2.25 The Biodiversity Management Plan must identify all measures proposed in the BDAR to mitigate and manage impacts on biodiversity outlined in Table [C1], including performance measures for each commitment.

Table [C1] Statement of commitments to mitigate and manage biodiversity impacts

Biodiversity issue	Measure	Timing	Responsibility
[Identify relevant biodiversity impact]	[Identify relevant measure]	[Indicate the timing or frequency of the performance of the measure]	[Indicate a position responsible for ensuring the performance of the measure]